



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 3361-99

28 September 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 7 April 1969 at age 21. On or about 7 December 1969, while in Vietnam, you received a fragment wound to your shoulder. Subsequently, you received two nonjudicial punishments. The offenses included unauthorized absences totalling 19 days and failure to obey a lawful order on two occasions.

Your military record shows that on 22 May 1970 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for unauthorized absences totalling 21 days, failure to obey a lawful order, and being in an off-limits area. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You received an undesirable discharge

on 9 June 1970.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity, combat service, and the contention that your wound caused the misconduct which resulted in your discharge. However, the Board found these factors were not sufficient to warrant recharacterization of your discharge given the seriousness of the offenses for which you requested discharge and the two prior disciplinary actions, all of which occurred while you were in Vietnam. The Board believed that considerable clemency was extended to you when your request to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and should not be permitted to change it now. In this regard, the Board could not find a connection between your wound and the misconduct of record. Therefore, the Board could not find a connection between your wound and the misconduct of record. Therefore, the Board concluded that your discharge was proper as issued and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director